

REMARKS

This response is being submitted within two months of the issuance of the Final Office Action. This response reduces issues for Appeal.

Claims 1 and 4-10 are pending in this application. Claim 2, which has been cancelled by way of this amendment, has been incorporated into the only independent claim, 1. Claims 3 and 11-44 previously were cancelled.

Reconsideration of this Application and entry of this Amendment is respectfully requested.

Rejections Under 35 U.S.C. §102

Claims 1, 4, and 6-8 had been rejected under 35 U.S. C. §102(b) as anticipated by Kovacs-Hadady. This rejection is now moot. Claim 2, which hereunder was not rejected, has been incorporated into Claim 1. Accordingly, the Applicant respectfully requests withdrawal of this rejection.

Rejections Under 35 U.S.C. §103

Claims 1, 2, 4, 6-8 and 10 had been rejected under 35 U.S. C. §103(a) as obvious over Kovacs-Hadady in view of U.S. Patent No. 6,316,669 ("Park"). The present invention is directed, *inter alia*, to a system for predicting the cellular activity of an agent by utilizing a change in light spectrum caused by the formation of an ion-pair between a probe molecule and the agent. The change in light spectrum may be correlated with data to predict, for example, the antimicrobial activity of the agent. As the Examiner is aware, slight changes in a composition (e.g., an ophthalmic formulation) may lead to drastic changes in cellular activity (e.g., antimicrobial activity), even when the cellular agent and its concentration remain constant. The system of the present invention, *inter alia*, reduces the time,

expense, and effort required to design an effective preservative- or antimicrobial-containing composition.

Kovacs-Hadady is directed to determining the presence of benzalkonium chloride in a solution. Kovacs-Hadady says nothing about prediction of antimicrobial or cellular activity. Neither Kovacs-Hadady nor Park provide any motivation to transform that which is disclosed by Kovacs-Hadady into a system for predicting cellular activity. In addition, the claims have been amended to recite that the agent is not benzalkonium chloride. Even if it reasonably could be argued that a skilled artisan could devise a system for prediction of cellular activity based on the teachings of Kovacs-Hadady and Park, a skilled artisan would not expect Kovacs-Hadady's non-polymeric benzalkonium chloride to behave in the same manner (e.g., creation of ion pairs) as Park's polymeric biguanide compounds. A skilled artisan, therefore, would not seek the teachings of Park to augment the teachings of Kovacs-Hadady. Since neither Kovacs-Hadady nor Park provides any motivation to make a system for predicting cellular activity and a skilled artisan would not seek Park to combine with Kovacs-Hadady, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 1 and 4-10 had been rejected under 35 U.S. C. §103(a) as obvious over Kovacs-Hadady in view of U.S. Patent No. 3,678,151 to Horonick. This rejection is now moot. Claim 2, which hereunder was not rejected, has been incorporated into Claim 1. Accordingly, the Applicant respectfully requests withdrawal of this rejection.


CONCLUSION

The Applicant respectfully requests withdrawal of all rejections and that a Notice of Allowance be issued for this application. The Commissioner is authorized to charge any fee which may be required in connection with this

Amendment to deposit account No. 502317. If any issues remain, the Examiner is invited to contact the undersigned.

Respectfully submitted,

Dated: August 21, 2007



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